

under review. If HUD determines that the proposal under review is acceptable, it shall notify the PHA in writing and shall forward to it for execution an ACC (or ACC amendment). If the PHA already has executed an ACC (or ACC amendment) for the entire reserved amount, HUD shall notify the PHA that it is authorized to draw down funds in accordance with § 941.302.

(b) *Approved proposal.* Units developed under this part shall be developed only in accordance with an approved proposal.

(c) *Approved amendments.* Material changes in the approved proposal, including any increase in the budget or any change in the payment schedule, require an amendment to the proposal, which must be approved by HUD. The determination of what constitutes a material change will be made by HUD.

**§ 941.306 Maximum development cost.**

(a) *Limit on approved HUD funds to Total Development Cost.* No funds provided by HUD pursuant to the Act may be used to pay costs in excess of the TDC without the written approval of HUD. Approval of a higher project cost will only be given upon the following demonstration by the PHA:

(1) That the excess costs are reasonable and necessary to develop a modest non-luxury project consistent with the standards set forth in this part, providing for efficient project design, durability, energy conservation, safety, security, economical maintenance, and healthy family life in a neighborhood environment; and

(2) That the PHA has the funds available to pay for such excess costs.

(b) *Determination of maximum TDC.* HUD will determine the maximum total development cost (TDC) in accordance with section 6 of the Act. The maximum TDC for a development is calculated by multiplying the number of units for each bedroom size and structure type in the project times the applicable unit TDC limit for the bedroom size and structure type and adding the resulting amounts for all units in the project.

(c) *Donations.* Donations from other funding sources may be obtained by the PHA to supplement project costs which otherwise could not be included, pro-

vided that the added funds are not used for items that would result in substantially increased operating, maintenance or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act (42 U.S.C. 3545) can be made in accordance with 24 CFR part 12 (subpart D). Although donations are not subject to the TDC limitations set forth in paragraph (a) of this section, donations must be included in the project development cost budget, and legally acceptable written commitments for such donations must be provided by the PHA for HUD approval.

**Subpart D—Project Development**

SOURCE: 61 FR 38020, July 22, 1996, unless otherwise noted.

**§ 941.401 Site and property acquisition.**

(a) *Applicability.* The provisions of this section apply to projects being developed under the conventional, acquisition, and force account methods, and may apply to other development methods, as deemed appropriate by HUD.

(b) *Purchase agreement.* The purchase agreement shall reflect any conditions established by HUD, such as the site engineering studies that must be completed to determine whether the site is suitable for development of the project.

(c) *Title.*—(1) *General.* After HUD approves the site or property acquisition contract and notifies the PHA that it is authorized to take title, the PHA shall obtain title in accordance with the following certification. The PHA shall certify to HUD that it obtained a title insurance policy that guaranteed that the title was good and marketable before taking title and that it promptly recorded the deed and declaration of trust in the form prescribed by HUD.

(2) *Limitation.* After HUD notifies a PHA that has been determined to be troubled or modernization troubled in accordance with part 901 of this chapter, or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (c)(1) of this section, that the site or property acquisition contract has been approved, the PHA shall submit to HUD evidence that title to

the site or property is good and marketable. If HUD approves the title evidence, it will inform the PHA that it is authorized to acquire title to the site or property. The PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require the PHA to submit evidence of such recordation.

**§ 941.402 Project design and construction.**

(a) *Compliance with HUD construction standards and Federal procurement requirements.*

(1) *General.* A PHA may certify that its proposed design and construction plans for the development are in accordance with HUD's design and construction standards at § 941.203, and that its bidding procedures are in accordance with Federal procurement requirements.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (a)(1) of this section, the PHA must submit the proposed design and construction plans and its bidding procedures (unless HUD notifies the PHA that it may use the certification procedure specified in paragraph (a)(1) of this section).

(b) *Contract administration.* The PHA shall be responsible for contract administration and shall contract for the services of an architect, or other person licensed under State law, to assist and advise the PHA in contract administration and inspections to assure that the work is done in accordance with HUD requirements. A HUD representative may periodically visit the project site to monitor PHA contract administration.

(c) *Prevailing wage rates.* See § 965.101 of this chapter.

**§ 941.403 Acceptance of work and contract settlement.**

(a) *Notification of completion.* The contractor or developer shall notify the PHA in writing when the contract work, including any approved off-site work, will be completed and ready for inspection.

(b) *Acceptance.* (1) *General.* A PHA may carry out the final inspection of the work and may accept the completed work. If, upon inspection, the PHA determines that the work is complete and satisfactory, except for work that is appropriate for delayed completion, the work shall be accepted by the PHA. The PHA shall certify to HUD before it pays the contractor or developer that it has inspected the work and determined that it is acceptable and in compliance with the construction contract or contract of sale and HUD requirements. The PHA shall determine any hold-back for items of delayed completion, and the amount due and payable for the work that has been accepted including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor or developer shall be paid for items of delayed construction only after inspection and acceptance of this work by the PHA.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (b)(1) of this section, the procedure described in paragraph (b)(1) of this section will be followed, except that HUD must concur in the necessary PHA determinations and approvals.

(c) *Guarantees and warranties.* The construction contract or contract of sale shall specify the project guaranty period and amounts to be withheld and shall provide for assignment to the PHA of all manufacturer and supplier warranties required by the construction documents. The PHA shall inspect each dwelling unit and the overall project approximately three months after the beginning of the project guaranty period and three months before its expiration and also as may be necessary to exercise its rights before expiration of any warranties. The PHA shall require repair or replacement, prior to the expiration of the guaranty or warranty periods, of any defective items.

(d) *Title to turnkey projects.* (1) *General.* When the work has been inspected and accepted on a turnkey project, in